ATR Wire and Cable Co. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 9–CA-14642

17 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 27 September 1982 Administrative Law Judge James L. Rose issued the attached Supplemental Decision in this proceeding.[1] Thereafter, Respondent filed exceptions and a supporting brief and the Charging Party filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommendation to reaffirm its original Order in this proceeding.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and on the basis of the Administrative Law Judge's Supplemental Decision and the entire record in this case, the National Labor Relations Board hereby reaffirms its Order previously issued on 1 May 1980 and orders that the Respondent, ATR Wire and Cable Co., Danville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the original Decision and Order in this proceeding (249 NLRB 218 (1980)).

[1] The Board's original Decision and Order in this proceeding issued on 1 May 1980 under the name *Firestone Wire & Cable Co.*, 249 NLRB 218.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent notes in its exceptions that throughout his Supplemental Decision the Administrative Law Judge erroneously refers to the Charging Party's chief organizer as "Keeler" rather than "Kettler." We hereby correct this mistake. Respondent also correctly points out that the Administrative Law Judge misspells employee Ray Meece's name in sec. A, 5, of his Supplemental Decision. We hereby correct this error as well.

[3] Member Hunter finds no merit in Respondent's objections. Although Member Hunter does not condone conduct of the type described in the objections, he concludes that it is insufficient to warrant setting side the election when reviewed in the totality of the circumstances and particularly the large size of the unit (approximately 400 employees).

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: On April 4 and 5, 1979, an election was held among the Respondent's[1] employees. There were 183 votes cast for the Petitioner (International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, herein also the Union) and 176 votes were cast against representation. There were no challenged ballots. Thereafter the Respondent filed timely objections to conduct affecting the results of the election and submitted affidavits in support thereof. Based on his investigation, the Regional Director for Region 9 concluded the evidence was insufficient to establish that the Union was responsible for any activity alleged to be objectionable and generally that the election was conducted in an atmosphere free from intimidation or coercion. He recommended to the Board that the Respondent's objections be overruled.

The Respondent filed exceptions to the Regional Director's report with the Board and for the first time requested that a hearing be held on its objections, apparently having been satisfied with submission of the case to the Regional Director upon affidavits. The Board denied the request for a hearing, affirmed the Regional Director's findings, overruled the Respondent's objections, and certified the Union as the collective-bargaining representative of the Respondent's employees in an appropriate unit.

The Respondent then refused to bargain with the Union. A charge was filed and a complaint issued alleging a violation of Section 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* On Motion for Summary Judgment, the Board concluded that the Respondent had refused to bargain with the Union and issue an appropriate order and remedy. *Firestone Wire & Cable Co.*, 249 NLRB 218 (1980).

The Respondent petitioned for review of this decision with the United States Court of Appeals for the Sixth Circuit and the Board applied for enforcement of its order. The court denied enforcement and remanded the matter to the Board for further proceedings, concluding that the Respondent's contentions raised sufficient material questions to warrant a hearing—that the "15 affidavits are facially sufficient to establish a *prima facie* case that laboratory conditions were destroyed." *ATR Wire & Cable Co. v. NLRB*, 671 F.2d 188 (1982). The Board then remanded the proceeding to the Regional Director for appropriate action. Since the ultimate issue concerns the Respondent's refusal to bargain, the matter was set for hearing before an administrative law judge, and heard by me on May 19, 20, 21, and 25, 1982.

In support of its objections, the Respondent now contends that numerous threats and use of coarse language directed to antiunion employees, as well as "sabotage" of

[1] At the time of the election the Respondent was a division of Firestone Tire and Rubber Company which subsequently sold its interest in the business here to ATR Wire and Cable Co. There is no question that ATR Wire and Cable Co. is a successor to Firestone and is now the Respondent in this matter.

company products and damage to automobiles of antiunion employees and supervisors, were singly objectionable conduct, and in total created an atmosphere of intimidation which made the holding of a free election impossible.

As will be discussed in more detail below, I conclude that the objections should be overruled. First, the acts relied on by the Respondent are by and large trivial, and in any event were not engaged in by anyone with the authority (actual or apparent) to act on behalf of the Union. Further, if there were less than a perfect laboratory atmosphere for the election, such was precipitated by statements of the Respondent's managers to all employees predating many of the acts relied on that such were "ANTICIPATED . . . IN THE REMAINING DAYS OF THIS UNION CAMPAIGN."

Though some of the proven statements by employees were intemperate and the damages to automobiles real, though minor, there is no evidence that any employees was not allowed to cast his ballot freely. Indeed, the preelection conduct here is quite similar in scope and content to that in *NLRB v. Bostik Division*, 517 F.2d 971 (6th Cir. 1975), wherein the Sixth Circuit Court of Appeals affirmed the Board's overruling of company objections. In *Bostik*, as here, there were numerous comments made by prounion employees which were alleged to be threatening, there was some name calling of antiunion employees by those in favor of the union, and there were four incidents of damage to automobiles owned by antiunion employees. However, there, as here, there was no evidence of a causal connection between the union or the union campaign and the automobile damage. Finally, in *Bostik*, as in the instant case, a change of only four votes would have reversed the outcome of the election—a fact not deemed determinative.

Upon the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I hereby make the following:

Findings of Fact and Conclusions of Law

A. *The Alleged Objectionable Conduct*

Over objection by the Union, testimony was allowed concerning events which were not specifically referred to in the objections but which arguably came within the omnibus paragraph. No evidence was offered concerning several of the objections. Thus the following chronology of events is organized according to the named individual alleged in the record and the Respondent's brief to have engaged in the objectionable conduct.

1. By Robert Glasscock

Bill Atwood testified that prior to the election (though on a date stated in the record) "Bobby Glasscock come up and told me to get off the company band wagon or he was going to kick my butt, you know, and he told me to go on out in the parking lot. And I told him to wait until after working hours and I'd be glad to meet him out there." Atwood further testified that he then asked two fellow employees to go with him to "cover my back so nobody would hit me from the back." When they went out to the parking lot nothing happened but when Atwood arrived home Glasscock and two other employees drove by his house and "flipped the bird at us."[2] Finally, Atwood testified that Glasscock called him "the company suck ass" and "brownie."

The Respondent contends that all this activity on the part of Glasscock, a known union sympathizer, was objectionable. It is noted however that Atwood was not particularly concerned by Glasscock's offer to fight. From the record they appear to be about the same size, both standing over 6 feet and weighing over 200 pounds.

Atwood himself attended a union meeting and signed a union authorization card, which raises the question of whether Glasscock's act was even related to the union campaign. In any event, I conclude that the events involving Glasscock and Atwood were no more than might reasonably be expected during the course of a union organizational campaign in an industrial setting. I find that Glasscock suggested a fight and did the other things attributed to him by Atwood, which are undenied.[3]

2. By Ronnie Grimes

Ronnie Grimes was identified by several witnesses as an outspoken advocate on behalf of the Union and is alleged to have engaged in several acts of objectionable conduct including threatening Ron Weathers, calling Elvern (Sonny) Allen names and threatening him, and "sabotaging" company equipment.

Ron Weathers, one of the principal witnesses called by the Respondent, testified at length concerning Ronnie Grimes' activity as well as that of others. Though I am convinced that Grimes in fact did engage in some of the activity attributed to him, I am nevertheless constrained to discredit Weathers' testimony. I found his demeanor negative, his answers cocky, and in one instance an outright fabrication. He testified on direct-examination and again on cross that he did not sign a union authorization card. He was questioned concerning a time when Ronnie Grimes asked him to sign an authorization card and he testified he declined to do so. He went further, however:

> Q. You've never signed one of these cards?
> A. No. I did not.

When a card with his signature was produced he testified that it looked like his signature but that he could not be sure, presumably to leave the impression that his earlier testimony was not false. His explanation of why he could not be sure it was his signature seemed a spur-of-the-moment invention. He said he sometimes gets in a hurry and signs his name with his left hand, even though he is right handed. Finally he said he signed the card but under pressure. Thus his testimony started with an abso-

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[2] This phrase describes a universally recognized obscene gesture.

[3] Morgan Wheeler testified concerning what Atwood told him about Glasscock's offer to fight. In Wheeler's version, Atwood said "three guys had told him, that they was going to beat his rump off, on the way to the parking lot or out of the parking lot. So we proceeded out to the parking lot with him." I believe that Wheeler's remembrance of this event, being as it is substantially different from that of Atwood to whom the statements were made, is not accurate, though it does tend to corroborate Atwood.

lute negative concerning signing the union authorization card, then he admitted possibly to signing one, then he agreed that the signature on the card in fact was his, but his testimony about not signing a card meant only that he did not do so when presented one by Grimes, and, finally, "I signed the union card after I was coerced to sign and I wish I'd never signed it but it happened."

That Weathers signed the union authorization card is material to the Respondent's contentions. The thrust of its objections, and Weathers' testimony in particular, is that as a company or antiunion employee, threats, name calling, and the like were directed at him. If, as I find, early in the campaign he signed a union authorization card and did not engage in any conduct identifying him as an antiunion employee then there would have been no reason for prounion employees to threaten him. I therefore discredit the testimony of Weathers.

Further, Ronnie Grimes testified, credibly I believe, that he thought Weather supported the Union. He denied ever having a conversation with Weathers about authorization cards, nor did he recall any conversations with Weathers concerning the Union prior to the election. As noted, I discredit Weathers and, finding Grimes generally credible, I conclude that the alleged incidences of threats by Grimes to Weathers did not occur.

Sometime prior to the election Ronnie Grimes, according to Allen, called Allen a "suck ass." Allen also testified that Grimes told him that "there would be something happen to it—our vehicles at the Company." This according to Allen took place about 2 weeks prior to the election. The name calling was about a month prior to the election.

Grimes denied ever telling Allen "something could happen to vehicles of people who supported the company." He did not deny calling Allen a "suck ass" and I therefore find that that event occurred sometime prior to the election. But I also conclude that it is of monumental insignificance.

The alleged automobile threat is somewhat more serious although, as I conclude, *infra*, that the actions of Grimes and other prounion employees were not attributable to the Union and were not of sufficient severity otherwise to justify setting aside the election, that the event happened as testified to by Allen may be assumed, but I do not believe it really happened.

Allen testified to the statement by Grimes in connection with his further testimony concerning alleged damage to his car. The essence of his testimony in this regard is that in coming to work one morning he was running late and thus drove 80 miles an hour. However, when going home from work that evening:

> We started home and got about a quarter mile from the factory and it just quit running. Then we got out and looked at it, checked everything, and we didn't see nothing wrong with it at the time. We drove another six or seven miles and it quit again, and we still didn't see nothing wrong with it. Then, when I got home I checked it and found some paper and some corn cobs, corn shucks, in the carburetor of my car—and a breather.

This an essentially incredible story. Allen did not explain how he was able to drive some 35 miles home if his car had quit running as a result of debris in the carburetor. On the other hand, Linda Wethington testified that on the day this was supposed to have occurred she recalls Allen passing her on the way home doing in excess of 50 to 55 miles per hour. Her testimony was generally credible. I therefore conclude that the Allen's car did not occur as testified to by him nor did Grimes threaten him that things would happen to cars of those who were procompany.

The allegation that Ronnie Grimes participated in "sabotage" of the production line is from the testimony of Jane M. Tate. She stated that, in talking with Larry Young about the loopro line, he told her that "it was tangled up [hung up] at times purposely." She did not testify that there was in fact any loss of production as a result.

Although Young may have said something along these lines to Tate, such is insufficient to support the conclusion that in fact the loopro line was "sabotaged." To the contrary, had there been any examples of a reduction in production prior to the election presumably the Company would have supporting records and would have brought them forward at the hearing to corroborate Tate's testimony. Since the Respondent did not produce such documentation, I must conclude that such does not exist. I therefore conclude that Ronnie Grimes did not, as alleged, engage in "sabotage" of company production.

3. By Larry Young

From testimony of Jane Tate outlined above, it is alleged that Larry Young engaged in objectionable conduct by sabotaging production. Though he may well have told Tate something along the lines she testified, and there is no denial he did so, I nevertheless conclude that in fact there was no measurable damage to the production process.

I note with regard to Tate's testimony, as well as that of all other witnesses of course, that she was attempting to remember conversations and events which took place 3 years previously. Since her testimony about the Young/Grimes incident involved being told of the event, as opposed to observing it, her recall necessarily was less precise. Thus, whatever it was that Young may have told Tate concerning the loopro line, inasmuch as there is no direct evidence of the event to which Young may have been referring, I do not give much weight to Tate's testimony. As with Grimes, I find that Young did not sabotage production.

In these conversations between Tate and Young, which occurred often, it is also alleged that Young threatened strike violence and damage to a supervisor's automobile. Tate testified:

> We were talking about—ah—strikes, because the truckers were on strike at this time too, and you know of the violence that happened. Well, my fear was that ah—could this possibly happen at Firestone, if we had a strike? And Larry would say, "Well, it's possible, that, it could happen." Because

> I just couldn't—grasp the—violence that would happen. It just seemed so unreal that people would actually so [sic] the things that were happening on the picket lines. But I was hearing of it at this time. And I come down and just finally asked Larry. I said, "Larry, you're a union person, and you know, would you hurt me, if I was to cross the picket line?" But he said—said, "no, I couldn't hurt you." But he said, "there could maybe, or would." He—he never directly threatened me. But he told that, you know, that these things do happen on picket lines. People are hurt at times.
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> I—I felt that Larry was being very honest about his answers, because of what I was hearing about the truckers strike. If people happen to cross the lines.

It should be noted that, undenied by the Respondent, management told employees about the possibility of the picket line violence in the event of a strike. The seed of concern was planted by the Respondent. Thus the Union is scarcely responsible when Tate initiated discussion with Young about the subject of picket line violence.

Further, I cannot conclude from Tate's testimony that in fact Young threatened her with picket line violence in the event the Union won the election. He said no more then was being told her by the Respondent's agents—that sometimes there is violence on picket lines.

It is finally alleged by the Respondent that Larry Young threatened that a supervisor's automobile would be damaged. Tate testified that several weeks before the election Young told her that "Chuck White would not be driving his car the next morning and that he was going to have a new windshield put in—was his belief." Tate went on to testify, however, that as far as she knew nothing in fact happened to White's car the next day nor did she hear that it had been damaged in any way. She testified though that "a long time later" she heard a rumor that Chuck White's car was supposed to have been damaged. She did not observe any damage to White's car. (White testified that the left-hand door of his automobile received a 4- to 5-inch scratch, 2 to 4 weeks prior to the election.)

Though I found Tate to be generally credible and note that Young did not testify, Tate's testimony really does not prove very much. The conversation in which Young was supposed to have told Tate about the possibility of damage to White's car occurred at a time when no such damage in fact happened. The only damage to White's car was a minor scratch which was not shown to have been causally connected to the union campaign. (White testified that both before and after the election occasionally automobiles in the parking lot are scratched.)

4. By Bruce Grimes

The Respondent argues that Bruce Grimes, the brother of Ronnie Grimes, threatened strike violence in a conversation with Ron Weathers and threatened Joyce Coleman with damage to her automobile if she did not sign an authorization card.

Although admitting that he had conversations with Weathers wherein the matter of strikes was discussed, he denied ever saying that people would get hurt if they crossed the picket line, as testified to by Weathers. As noted above, Weathers was not a credible witness and his testimony should not be accepted where there is a conflict. Grimes was a generally credible witness. Further, in election campaigns it is not uncommon for employees to discuss the possibility of strikes. I do not believe that anything Grimes said to Weathers went beyond normal discussion between employees.

Joyce Coleman testified that during the preelection campaign she was solicited to sign an authorization card by Grimes who, when she declined, allegedly stated, "Well, if you don't sign one, what if you go out and your car—your tires are flat?"

The Respondent argues that this event concerned Bruce Grimes, though Coleman did not supply a first name, and union counsel interrogated him concerning this event. Grimes denied making such a statement to Coleman and denied that he was solicitor of authorization cards on behalf of the Union. Indeed, the Respondent also contends that Grimes was a target of objectionable conduct, *infra.*

Coleman further testified that, following the alleged statement to her, she went to the company president who advised her not to worry about threatened damage to her automobile. He said the Company was watching the automobile of employees. Coleman did not in fact sign an authorization card. Apparently nothing happened to her automobile.

While it may have been that some individual made the statements attributed to Grimes by Coleman during the preelection campaign, given Grimes' general credibility, his denial of this event specifically, and his general inactivity on behalf of the Union, I conclude that Grimes did not solicit Coleman to sign an authorization card and did not threaten her with automobile damage should she refuse.

5. By Ray Meese

The Respondent contends that Bruce Grimes was subjected to abusive language by Ray Meese when Grimes wore a Firestone cap, which it is argued signified a pro-company position.

Grimes testified about this event stating that when the Company offered hats, he took one, put it on, and a few minutes later Meese came over and hollered, "I thought you was pro the Union. Are you turning coats now or are you going for the Company?" Grimes told Meese that he had not changed his opinion "and a few cuss words passed back and forth from both of us, but a few minutes time, we settled the whole matter ourselves, we parted as friends." This event is undenied by Reese, and I conclude that it occurred substantially as testified to by Grimes.

6. By Charles Moore

It is alleged that Charlie Moore "put pressure" on Howard Kirkpatrick by deliberately bringing him "bad wire." There is testimony that some of the wire used in the operation which Kirkpatrick performed is easier to work with than other wire and that when an operator gets "bad wire," his production goes down. However,

there is also testimony that all the wire, good and bad, is in the company inventory, and is expected to be used during the production process. There is no indication in the record that when an employee gets bad wire such affects his pay or his job, or is anything other than a minor aggravation. Since the bad wire is expected to be used someone must get it. Thus the contention, apparently, is that Kirkpatrick got more than his share. Though there is undisputed testimony from Kirkpatrick that he in fact did receive bad wire and that Moore was the one who was responsible, Kirkpatrick's testimony is nevertheless quite vague. Moore was an active spokesman on behalf of the Union and Kirkpatrick was antiunion. Kirkpatrick further testified that, while they were friends, they did "get into it" on several occasions concerning the merits of the Union. Still there is no real proof that in fact Kirkpatrick was really harmed or any particular reason to believe that his getting some bad wire would have any kind of an intimidating effect.

7. By Bruce Green

The Respondent alleges that Bruce Green, as the most active supporter of the Union in a carpool which included Joe Lee, threatened to "kick" Lee out of the carpool if he did not support the Union. The Respondent contends that this is objectionable conduct because Green relied on a ride from somebody else in order to get to work, inasmuch as he did not himself have reliable transportation. Therefore, according to the Respondent, these union supporters threatened to deprive Lee of an economic benefit in order to force him to support the Union. Green testified he did vote for the Union.

Inasmuch as Lee's testimony on this subject is undenied, I must conclude that in fact prounion members of his carpool did tell him that, unless he changed his position with regard to the campaign, they would no longer ride with him. There is no evidence that this action on their part was instigated by or even known to any official of the Union. There is no evidence to indicate that any of the three individuals was acting in this regard on behalf of the Union. The inference is they did not want to associate with an antiunion employee.

8. By Pat Qualls

The Respondent offered evidence that Pat Qualls told employee Myrtle Hazlett, "you have a long way to drive and anything could happen," and that her job would not last but a few days if the Union did not win the election. The Union's objection to testimony concerning this matter was sustained on grounds that the individual to whom Qualls allegedly made the statement was not the witnesses whose testimony was offered. Although hearsay is sometimes admissible to establish the truth of facts, generally in these proceedings hearsay is very unreliable, particularly when the witness is testifying to a declaration made 3 years previously. I ruled at the hearing, I conclude now, that the testimony proffered by the Respondent concerning this event is simply two unreliable to support a finding that the event happened.

9. By August Keeler

August Keeler is an International representative for the Union, and was the organizer directly responsible for the instant campaign. The Respondent contends that Keeler, as an agent of the Union, engaged in objectionable conduct in two specific respects: creating the impression of surveillance of the employees' activities by asking employees to advise him what was going on at the plant in the way of antiunion activity, and by pushing campaign literature into the car driven by Joyce Coleman one morning.

While I tend to credit Keeler over Coleman, there is no doubt he did participate in handbilling, and one morning did attempt to give her literature as she was driving to work. There is also no doubt she vehemently refused the offer.

Keeler admitted that he did ask employees to keep him posted concerning what was going on in the plant, to report to him what occurred at company meetings with employees, and to give him whatever literature was passed out by the Company.

10. By Linda Wethington

During a meeting at which Plant Manager Andrew Sardone spoke to employees, Linda Wethington was observed taking notes. Although admitting that she did scribble in an effort to give impression of note taking, she testified she actually did not do so. Whichever, there is no doubt that at a company meeting of employees, Wethington appeared to be taking notes. The Respondent contends that such was objectionable conduct.

11. By employees of John Montgomery

John Montgomery, a probationary supervisory, testified that, when he was appointed a supervisor, employees under him resented it. He testified, "They didn't like me. They didn't like the way that I supervised." He went on to testify that on one occasion an employee told Montgomery that he would not clean the machine as Montgomery had instructed.

Montgomery testified to a conversation with David Becker: "It was mainly over the situation we was involved in at the time, job negligence. David refused to go along with me, lost his temper and got hot. And he says, 'I know a few of those—they are going to get you when they meet you outside the plant. They're after you.'"

No doubt Montgomery was having problems with the individuals he supervised and the events occurred in general as he testified to them. However, there is further evidence from Respondent's witnesses that the difficulty Montgomery was having with his employees did not involve the union campaign. It concerned the manner in which he went about conducting himself as a supervisor.

12. By Mark Groser

It is alleged that Mark Groser committed an objectionable act by saying "that Mike [Crawford] must have kissed someone's ass, to get the company hat." Milford Daneghy, who overheard this comment, went on to tes-

tify that Crawford in fact continued to wear his company hat.

13. By persons unknown

Patricia Dunham testified that someone, whom she did not identify, called her "a brown noser." She testified further that she had been called such before the union campaign.

Paula Durr testified that she overheard part of a telephone call to her husband. She heard a man saying to her husband "and your wife's car could get messed up." This occurred 2 or 3 weeks prior to the election.

14. The damaged automobiles

As noted above, Ron Weathers testified that he discovered a 4- to 5-inch scratch on his car, prior to the election.

James Sprague testified that, the week before the election, he discovered that the battery cable of his automobile had been detached which was the reason he was unable to start his car on leaving work.

Luther Ford testified that he saw a hole about the size of a pencil in the radiator of Johnny Johnson's car. Johnson did not testify and thus there is no direct evidence of when or how this hole materalized.

As noted above, Allen testified to debris in his carburetor, an event which I do not believe.

Kirkpatrick testified that "several times spark plug wires would be pulled off and just little things like that—nothing major." He did not elaborate on what other things happened to his truck nor did he testify to where his truck was when these events occurred.

Sherry Gooch testified that about 2 weeks prior to the election she discovered a scratch on her car, 1 inch by one-quarter inch.

John Montgomery testified that, prior to the election, 1 day on leaving work he discovered that one of the tires on his car was flat. When he moved the car, another tire went flat. He testified that one tire had been deflated, the other had been cut.

As noted above, Charles White testified that prior to the election he discovered a scratch about 4 to 5 inches long on the door of his automobile.

B. *Analysis and Concluding Findings*

The general thrust of the Respondent's argument is that the above events were the responsibility of the Union, inasmuch as they were acts engaged in by active union supporters most, if not all, of whom were members of the "in-plant organizing committee." Thus these events created an atmosphere of fear and intimidation which made the holding of a free and fair election among employees impossible.

The Respondent contends that the signing of a card stating, "I volunteer to serve on the UAW in-plant organizing committee" imbues one with the authority to act on behalf of the Union. Accordingly, any acts of the 117 employees who signed such a card were the responsibility of the Union. In support of this proposition the Respondent cites *PPG Industries v. NLRB*, 671 F.2d 817 (4th Cir. 1982).

It may be that members of a union's in-plant organizing committee can have sufficient authority so that their acts would be the responsibility of the union in determining whether or not an election should be set aside. But I do not believe such was the case here.

At the first four meetings Keeler had with employees, he asked them to sign both an authorization card and an in-plant committee card. However, the in-plant committee did not ever exist as such. These individuals were simply those whom Keeler wanted to be able to call on to come to meetings and participate in distribution when asked. Never were the names of the in-plant committee posted or in any way circulated among union supporters or to employees of the Company generally. No apparent authority was given by the Union to the in-plant committee members so far as other employees knew. Those who signed the in-plant cards were not in any way publicized either by the Union or by any individuals as forming such a committee. Not one witness for the Respondent testified that an in-plant committee member ever identified himself or herself as such. There is no evidence that any employee who testified on behalf of the Respondent concerning threats and the like even knew that the individual in question had signed an in-plant committee card. Compare *NLRB v. Georgetown Dress Corp.*, 537 F.2d 1239 (4th Cir. 1976), where the circuit court, in setting aside the election, concluded that members of an in-plant committee had been acting "apparently within the scope of their authority." Similarly, in *PPG Industries*, relied on by the Respondent, there was additional evidence that members of the in-plant committee had some authority from the Union. Here there was no basis on which an employee would have known that any given individual had signed an in-plant committee card. Nor in any other way did Keeler imbue any of these individuals, or any others for that matter, with any apparent authority to act on behalf of the Union. To the contrary he credibly testified that he specifically told those active in the campaign that only he spoke for the Union. At no time did Keeler condone any of the acts relied on by the Respondent as objectionable conduct. Specifically, when learning that there had been damage to automobiles and verbal confrontations, Keeler disavowed such acts to employees and to those attending the union meetings.

Though the issue is not strictly one of agency, still, to find the Union responsible there must be something from which employees would reasonably believe the Union to be the instigator. I therefore conclude that on the facts of this case, whatever acts any individual may have engaged in during the course of the campaign, he did so as an individual.

There is nothing to indicate that the individuals who supported the Union and who engaged in the acts complained of by the Respondent had any more authority from the Union to engage in such activity than the antiunion employees had authority from the Respondent to speak against the Union.

Thus, in analyzing the nature and quality of the events relied on by the Respondent, the acts must be considered those of third parties rather than of the Union (except for those of Keeler).

It has long been held that the acts of third parties (particularly including employees who are not acting under the actual or apparent authority of the union) are given less weight in determining whether or not conduct actually or potentially would affect the freedom of choice of employees. *Orleans Mfg. Co.*, 120 NLRB 630 (1958). *Fabricut, Inc.*, 233 NLRB 1196 (1977).

In evaluating the acts relied on by the Respondent, I conclude that they are by and large trivial and of the type and character often found in connection with such a campaign, particularly one involving nearly 400 people. That is not to say that the acts and language used by these individuals is to be condoned. Rather, it is to accept the realities of the industrial setting and to note that antiseptic perfection is not a realistic possibility. Thus the test is whether employees were able to go to the polls and cast their votes without fear of intimidation, reprisal, or coercion. I conclude that here none of the acts complained about by the Respondent were sufficiently severe so as to have intimidated the free choice of fellow employees. The conduct here, as noted above, is similar to that found unobjectionable by the Board and the Sixth Circuit in *NLRB v. Bostik Division, supra.*

Property damage is of course a serious matter. Nevertheless, the mere fact that employees, even procompany employees, discover that their automobiles had suffered some minor damage prior to an election is not itself sufficient to establish a causal connection between the Union and the damage. This was a large parking lot, with many cars coming and going during the rotation of three shifts. Where there is a lot of movement in and out of a parking lot, some damage to automobiles is to be expected and indeed there was testimony of parking lot damage at times not immediately preceding the election here. Furthermore, the damage that was established by the Respondent was, except as to the hole in the radiator, insignificant—loosened battery and spark plug cables, and small scratches. With regard to the hole in the radiator, it is unknown whether that in fact even occurred at the company parking lot.

In no case was there any testimony concerning who was responsible for the scratches, loosening battery and spark plug cables, the flat tires, and the like. There is just simply no evidence linking the proven damage to automobiles to the Union or even to union supporters. Specifically, in the case of flat tires on John Montgomery's car, from his testimony it appears that such related to him as a supervisor.

Again, as in *NLRB v. Bostik Division, supra*, that there was damage to automobiles of company supporters is not, without more, sufficient to justify setting aside the representational desires of a majority of the Respondent's employees.

The policy of the Act is to further collective bargaining if a majority of employees in an appropriate unit so choose. The question here is whether the wishes of a majority of the Respondent's employees to bargain collectively should be set aside because of the actions of a few individuals. Should the validity of an election depend upon the subjective feelings of a few antiunion employees, even if those subjective feelings were real as to them? I conclude that the overwhelmlng case authority is to the contrary. Absent actual acts which would reasonably intimidate or coerce employees in the exercise of their votes, the wishes of a majority of employees should not be lightly set aside.

Thus, the preelection conduct established by the Respondent was trivial in the extreme. Neither singly nor in total could have these events realistically created an atmosphere requiring the election to be set aside.

To summerize, the Respondent proved, in addition to vehicle damage: One employee invited another to fight but did not show up. Employees called apparently procompany employees "the company suck ass," "brownie," and similar variations. And there were incidents of prounion and antiunion employees exchanging obscene words. A prounion employee "flipped the bird" at an antiunion employee. Prounion employees at best engaged in minor harassment of antiunion employees on the job by bringing them "bad wire." Statements were made that there is sometimes violence on picket lines. One employee scribbled on a piece of paper during a management speech to employees. There was a threat of automobile damage by an unknown phone caller. Three prounion employees threatened to disassociate another from their carpool unless he changed his procompany position. This was not, as argued by the Respondent, analogous to a company denying an economic benefit. Rather, it was simply an indication by a group of employees to another that they did not choose to ride with him if he continued with his position. Nothing is more natural than people choosing to be associated with those of like mind. For employees to exercise their right to ride to work with whomever they wish is not, I conclude, objectionable conduct.

Finally, the acts of Keeler relied on by the Respondent as being objectionable conduct clearly were not sufficient to set aside the election. The matter of his having "forced" campaign literature on Joyce Coleman is more a matter of interpretation than of physical fact. Coleman did not want the literature and, when approached at the gate by Keeler, claims to have taken offense and herself began the exchange of words. Whether he actually put the campaign literature in her car or not, such is clearly is not the type of activity which could have potentially coercive effect on the free choice of employees.

The contention that Keeler objectionably created the impression of surveillance of employees' activity is similarly without legal foundation. Keeler did ask employees to report to him what was going on at the plant so that he could intelligently plan the Union's campaign strategy. Such happens in virtually every campaign for rarely, if ever, does a company allow a union's nonemployee organizers on company property. In any event, Keeler's request to his supporters is not analogous, as argued by the Respondent, to a company's engaging in surveillance of employees' union activity. It is unlawful for a company to engage in surveillance because a necessary preliminary to subsequent action against employees for having engaged in union activity is knowing they did so. For the union organizer to know about the Company's anticampaign is not the same, or even similar.

That the acts relied on by the Respondent did not in fact have a coercive effect in connection with this campaign is indicated by the fact that antiunion employees spoke up concerning their position both at the work place and at union meetings which they freely attended. I do not believe that employees generally would view the activity relied on by the Respondent as being more than the trivial events they were.

Upon the foregoing findings of fact and conclusions of law, the entire record in this matter, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following:

RECOMMENDATION[4]

It is recommended that the Board overrule the Respondent's objections to conduct affecting the results of the election held on April 4 and 5, 1979, in Case 9-RC-12796; reaffirm its previous conclusion that the Union was properly certified; and that the Board reaffirm its Order dated May 1, 1980, that the Respondent bargain with the Union, the certification year to begin the date the Respondent commences bargaining.

[4] In the event no exceptions are filed as provided in Sec. 102.4 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.